

Senate Engrossed House Bill

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 50

HOUSE BILL 2389

AN ACT

AMENDING SECTIONS 38-711, 38-740, 38-742, 38-758, 38-769, 38-783 AND
38-797.03, ARIZONA REVISED STATUTES; MAKING AN APPROPRIATION; RELATING TO THE
ARIZONA STATE RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-711, Arizona Revised Statutes, is amended to
3 read:

4 38-711. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Active member" means a member as defined in paragraph 23,
7 subdivision (b) of this section who satisfies the eligibility criteria
8 prescribed in section 38-727 and who is currently making member contributions
9 as prescribed in section 38-736.

10 2. "Actuarial equivalent" means equality in value of the aggregate
11 amounts expected to be received under two different forms of payment, based
12 on mortality and interest rate assumptions approved from time to time by the
13 board.

14 3. "ASRS" means the Arizona state retirement system established by
15 this article.

16 4. "Assets" means the resources of ASRS including all cash,
17 investments or securities.

18 5. "Average monthly compensation" means:

19 (a) For a member whose membership in ASRS commenced before January 1,
20 1984 and who left the member's contributions on deposit or reinstated
21 forfeited credited service pursuant to section 38-742 for a period of
22 employment that commenced before January 1, 1984, THE HIGHER OF EITHER:

23 (i) THE MONTHLY AVERAGE OF COMPENSATION THAT IS CALCULATED PURSUANT TO
24 SUBDIVISION (b) OF THIS PARAGRAPH.

25 (ii) The monthly average of compensation on which contributions were
26 remitted during a period of sixty consecutive months during which the member
27 receives the highest compensation within the last one hundred twenty months
28 of credited service. Any month for which no contributions are reported to
29 ASRS or that falls within a period of nonpaid or partially paid leave of
30 absence or sabbatical leave shall be excluded from the computation. The
31 sixty consecutive months may entirely precede, may be both before and after
32 or may be completely after any excluded months. If the member was employed
33 for less than sixty consecutive months, the average monthly compensation is
34 based on the total consecutive months worked. Payments for accumulated
35 vacation or annual leave, sick leave, compensatory time or other forms of
36 termination pay which, before August 12, 2005, constitute compensation for
37 members whose membership in ASRS commenced before January 1, 1984, do not
38 cease to be included as compensation if paid in the form of nonelective
39 employer contributions under a 26 United States Code section 403(b) plan if
40 all payments of employer and employee contributions are made at the time of
41 termination. Contributions shall be made to ASRS on these amounts pursuant
42 to sections 38-735, 38-736 and 38-737.

43 (b) ~~Effective July 1, 1985~~ FOR A MEMBER WHOSE MEMBERSHIP IN ASRS
44 COMMENCED ON OR AFTER JANUARY 1, 1984 BUT BEFORE JULY 1, 2011, the monthly
45 average of compensation on which contributions were remitted during a period

1 of thirty-six consecutive months during which a member receives the highest
 2 compensation within the last one hundred twenty months of credited service.
 3 Any month for which no contributions are reported to ASRS or that falls
 4 within a period of nonpaid or partially paid leave of absence or sabbatical
 5 leave shall be excluded from the computation. The thirty-six consecutive
 6 months may entirely precede, may be both before and after or may be
 7 completely after any excluded months. If the member was employed for less
 8 than thirty-six consecutive months, the average monthly compensation shall be
 9 based on the total consecutive months worked. ~~This subdivision applies only~~
 10 ~~to members whose membership in ASRS was effective after December 31, 1983 or~~
 11 ~~who agree in writing as a binding condition of eligibility for being granted~~
 12 ~~the benefit advantages available under this subdivision to have their benefit~~
 13 ~~computed on the basis of the definition of compensation.~~

14 (c) FOR A MEMBER WHOSE MEMBERSHIP IN ASRS COMMENCED ON OR AFTER JULY
 15 1, 2011, THE MONTHLY AVERAGE OF COMPENSATION ON WHICH CONTRIBUTIONS WERE
 16 REMITTED DURING A PERIOD OF SIXTY CONSECUTIVE MONTHS DURING WHICH A MEMBER
 17 RECEIVES THE HIGHEST COMPENSATION WITHIN THE LAST ONE HUNDRED TWENTY MONTHS
 18 OF CREDITED SERVICE. ANY MONTH FOR WHICH NO CONTRIBUTIONS ARE REPORTED TO
 19 ASRS OR THAT FALLS WITHIN A PERIOD OF NONPAID OR PARTIALLY PAID LEAVE OF
 20 ABSENCE OR SABBATICAL LEAVE SHALL BE EXCLUDED FROM THE COMPUTATION. THE
 21 SIXTY CONSECUTIVE MONTHS MAY ENTIRELY PRECEDE, MAY BE BOTH BEFORE AND AFTER
 22 OR MAY BE COMPLETELY AFTER ANY EXCLUDED MONTHS. IF THE MEMBER WAS EMPLOYED
 23 FOR LESS THAN SIXTY CONSECUTIVE MONTHS, THE AVERAGE MONTHLY COMPENSATION
 24 SHALL BE BASED ON THE TOTAL CONSECUTIVE MONTHS WORKED.

25 6. "Board" means the ASRS board established in section 38-713.

26 7. "Compensation" means the gross amount paid to a member by an
 27 employer as salary or wages, including amounts that are subject to deferred
 28 compensation or tax shelter agreements, for services rendered to or for an
 29 employer, or that would have been paid to the member except for the member's
 30 election or a legal requirement that all or part of the gross amount be used
 31 for other purposes, but does not include amounts paid in excess of
 32 compensation limits established in section 38-746. Compensation includes
 33 amounts paid as salary or wages to a member by a second employer if the
 34 member meets the requirements prescribed in paragraph 23, subdivision (b) of
 35 this section with that second employer. Compensation, as provided in
 36 paragraph 5, subdivision (b) OR (c) of this section, does not include:

37 (a) Lump sum payments, on termination of employment, for accumulated
 38 vacation or annual leave, sick leave, compensatory time or any other form of
 39 termination pay whether the payments are made in one payment or by
 40 installments over a period of time.

41 (b) Damages, costs, attorney fees, interest or other penalties paid
 42 pursuant to a court order or a compromise settlement or agreement to satisfy
 43 a grievance or claim even though the amount of the payment is based in whole
 44 or in part on previous salary or wage levels, except that, if the court order
 45 or compromise settlement or agreement directs salary or wages to be paid for

1 a specific period of time, the payment is compensation for that specific
2 period of time. If the amount directed to be paid is less than the actual
3 salary or wages that would have been paid for the period if service had been
4 performed, the contributions for the period shall be based on the amount of
5 compensation that would have been paid if the service had been performed.

6 (c) Payment, at the member's option, in lieu of fringe benefits that
7 are normally paid for or provided by the employer.

8 (d) Merit awards pursuant to section 38-613 and performance bonuses
9 paid to assistant attorneys general pursuant to section 41-192.

10 (e) Amounts that are paid as salary or wages to a member for which
11 employer contributions have not been paid.

12 8. "Contingent annuitant" means the person named by a member to
13 receive retirement income payable following a member's death after retirement
14 as provided in section 38-760.

15 9. "Credited service" means, subject to section 38-739, the number of
16 years standing to the member's credit on the books of ASRS during which the
17 member made the required contributions.

18 10. "Current annual compensation" means the greater of:

19 (a) Annualized compensation of the typical pay period amount
20 immediately before the date of a request to ASRS to purchase credited service
21 pursuant to section 38-743, 38-744 or 38-745. The typical pay period amount
22 shall be determined by taking the five pay periods immediately before the
23 date of a request, disregarding the highest and lowest compensation amount
24 pay periods and averaging the three remaining pay periods.

25 (b) Annualized compensation of the partial year, disregarding the
26 first compensation amount pay period, if the member has less than twelve
27 months total credited service on the date of a request to purchase credited
28 service pursuant to section 38-743, 38-744 or 38-745.

29 (c) The sum of the twelve months of compensation immediately before
30 the date of a request to ASRS to purchase credited service pursuant to
31 section 38-743, 38-744 or 38-745.

32 (d) The sum of the thirty-six months of compensation immediately
33 before the date of a request to ASRS to purchase credited service pursuant to
34 section 38-743, 38-744 or 38-745 divided by three.

35 (e) If the member has retired one or more times from ASRS, the average
36 monthly compensation that was used for calculating the member's last pension
37 benefit times twelve.

38 11. "Early retirement" means retirement before a member's normal
39 retirement date after five years of total credited service and attainment of
40 age fifty.

41 12. "Effective date" means July 1, 1970, except with respect to
42 employers and members whose contributions to ASRS commence thereafter, the
43 effective date of their membership in ASRS is as specified in the applicable
44 joinder agreement.

- 1 13. "Employer" means:
 - 2 (a) This state.
 - 3 (b) Participating political subdivisions.
 - 4 (c) Participating political subdivision entities.
- 5 14. "Employer contributions" means all amounts paid into ASRS by an
6 employer on behalf of a member.
- 7 15. "Fiscal year" means the period from July 1 of any year to June 30
8 of the following year.
- 9 16. "Inactive member" means a member who previously made contributions
10 to ASRS and who satisfies each of the following:
 - 11 (a) Has not retired.
 - 12 (b) Is not eligible for active membership in ASRS.
 - 13 (c) Is not currently making contributions to ASRS.
 - 14 (d) Has not withdrawn contributions from ASRS.
- 15 17. "Interest" means the assumed actuarial investment earnings rate
16 approved by the board.
- 17 18. "Internal revenue code" means the United States internal revenue
18 code of 1986, as amended.
- 19 19. "Investment management" means the persons, companies, banks,
20 insurance company investment funds, mutual fund companies, management or any
21 combinations of those entities that are appointed by ASRS and that have
22 responsibility and authority for investment of the monies of ASRS.
- 23 20. "Late retirement" means retirement after normal retirement.
- 24 21. "Leave of absence" means any unpaid leave authorized by the
25 employer, including leaves authorized for sickness or disability or to pursue
26 education or training.
- 27 22. "Life annuity" means equal monthly installments payable during the
28 member's lifetime after retirement.
- 29 23. "Member":
 - 30 (a) Means any employee of an employer on the effective date.
 - 31 (b) Means all employees of an employer who are eligible for membership
32 pursuant to section 38-727 and who are engaged to work at least twenty weeks
33 in each fiscal year and at least twenty hours each week.
 - 34 (c) Means any person receiving a benefit under ASRS.
 - 35 (d) Means any person who is a former active member of ASRS and who has
36 not withdrawn contributions from ASRS pursuant to section 38-740.
 - 37 (e) Does not include any employee of an employer who is otherwise
38 eligible pursuant to this article and who begins service in a limited
39 appointment for not more than eighteen months on or after July 1, 1979. If
40 the employment exceeds eighteen months, the employee shall be covered by ASRS
41 as of the beginning of the nineteenth month of employment. In order to be
42 excluded under this subdivision, classifications of employees designated by
43 employers as limited appointments must be approved by the director.

1 (f) Does not include any leased employee. For the purposes of section
2 414(n) of the internal revenue code, "leased employee" means an individual
3 who:

4 (i) Is not otherwise an employee of an employer.

5 (ii) Pursuant to a leasing agreement between the employer and another
6 person, performs services for the employer on a substantially full-time basis
7 for at least one year.

8 (iii) Performs services under the primary direction or control of the
9 employer.

10 24. "Member contributions" means all amounts paid to ASRS by a member.

11 25. "Normal costs" means the sum of the individual normal costs for all
12 active members for each fiscal year. The normal cost for an individual
13 active member is the cost that is assigned to the fiscal year using the
14 projected unit credit method.

15 26. "Normal retirement age" means the age at which a member reaches the
16 member's normal retirement date.

17 27. "Normal retirement date" means the earliest of the following:

18 (a) A member's sixty-fifth birthday.

19 (b) A member's sixty-second birthday and completion of at least ten
20 years of credited service.

21 (c) FOR A MEMBER WHOSE MEMBERSHIP COMMENCED BEFORE JULY 1, 2011, the
22 first day that the sum of a member's age and years of total credited service
23 equals eighty. FOR A MEMBER WHOSE MEMBERSHIP COMMENCED ON OR AFTER JULY 1,
24 2011, THE FIRST DAY THAT THE SUM OF A MEMBER'S AGE AND YEARS OF TOTAL
25 CREDITED SERVICE EQUALS EIGHTY-FIVE.

26 28. "Political subdivision" means any political subdivision of this
27 state and includes a political subdivision entity.

28 29. "Political subdivision entity" means an entity:

29 (a) That is located in this state.

30 (b) That is created in whole or in part by political subdivisions,
31 including instrumentalities of political subdivisions.

32 (c) Where a majority of the membership of the entity is composed of
33 political subdivisions.

34 (d) Whose primary purpose is the performance of a government related
35 service.

36 30. "Retired member" means a member who is receiving retirement
37 benefits pursuant to this article.

38 31. "Service year" means fiscal year, except that:

39 (a) If the normal work year required of a member is less than the full
40 fiscal year but is for a period of at least nine months, the service year is
41 the normal work year.

42 (b) For a salaried member employed on a contract basis under one
43 contract, or two or more consecutive contracts, for a total period of at
44 least nine months, the service year is the total period of the contract or
45 consecutive contracts.

1 (c) In determining average monthly compensation pursuant to paragraph
2 5 of this section, the service year is considered to be twelve months of
3 compensation.

4 32. "State" means this state, including any department, office, board,
5 commission, agency, institution or other instrumentality of this state.

6 33. "Vested" means that a member is eligible to receive a future
7 retirement benefit.

8 Sec. 2. Section 38-740, Arizona Revised Statutes, is amended to read:

9 38-740. Return of contributions

10 A. Any A member WHOSE MEMBERSHIP COMMENCED BEFORE JULY 1, 2011 AND who
11 leaves employment other than by retirement or death may elect to receive a
12 return of the contributions as follows:

13 1. If the member has less than five years of credited service, the
14 member shall receive ALL OF the member's contributions.

15 2. If a member has five or more years of credited service, the member
16 shall receive the member's contributions and an amount equal to a percentage
17 of the employer contributions paid on behalf of the member. The percentage
18 of employer contributions paid on behalf of the member shall be as follows:

19 (a) 5.0 to 5.9 years of credited service, twenty-five per cent.

20 (b) 6.0 to 6.9 years of credited service, forty per cent.

21 (c) 7.0 to 7.9 years of credited service, fifty-five per cent.

22 (d) 8.0 to 8.9 years of credited service, seventy per cent.

23 (e) 9.0 to 9.9 years of credited service, eighty-five per cent.

24 (f) 10.0 or more years of credited service, one hundred per cent.

25 3. Interest on the returned contributions as determined by the board.

26 B. A MEMBER WHOSE MEMBERSHIP COMMENCED ON OR AFTER JULY 1, 2011 AND
27 WHO LEAVES EMPLOYMENT OTHER THAN BY RETIREMENT OR DEATH MAY ELECT TO RECEIVE
28 A RETURN OF ALL OF THE MEMBER'S CONTRIBUTIONS WITH INTEREST AS DETERMINED BY
29 THE BOARD.

30 C. NOTWITHSTANDING SUBSECTION B, IF A MEMBER HAS FIVE OR MORE YEARS OF
31 CREDITED SERVICE AND THE MEMBER IS TERMINATED SOLELY BECAUSE OF AN EMPLOYER
32 REDUCTION IN FORCE BY REASON OF A LACK OF MONIES OR ELIMINATION OF THE
33 MEMBER'S POSITION, THE MEMBER IS ENTITLED TO RECEIVE THE AMOUNTS PRESCRIBED
34 IN SUBSECTION A.

35 ~~B.~~ D. Withdrawal of contributions with interest constitutes a
36 withdrawal from membership in ASRS and results in a forfeiture of all other
37 benefits under ASRS.

38 ~~C.~~ E. Notwithstanding any other provision of this article, a member
39 who has not received a return of contributions pursuant to this section may
40 combine any two or more periods of service for purposes of determining the
41 member's benefits.

42 ~~D.~~ F. If a member receives more than the amount due to a member
43 pursuant to this section, the member shall repay the amount of the
44 overpayment together with interest at the interest rate earned on ASRS
45 investments as reported on a quarterly basis, but not less than the valuation

1 rate established by the board, from the time of overpayment to the settlement
2 of the debt.

3 Sec. 3. Section 38-742, Arizona Revised Statutes, is amended to read:

4 38-742. Reinstatement

5 A. If an active member who received a return of contributions on
6 termination of employment and by receipt of those contributions forfeited
7 credited service earned on that employment, as provided in section 38-740,
8 subsection A OR B, is subsequently reemployed by an employer, the member's
9 service shall be credited only from the date the member's most recent
10 reemployment period commenced.

11 B. Notwithstanding subsection A of this section, the member may
12 redeposit the amount of the contributions the member received at the time of
13 the member's separation from service, with interest on that amount to the
14 date of redeposit at the interest rate assumption approved by the board for
15 actuarial equivalency. On satisfaction of this obligation, the member's
16 service credits acquired by the previous employment shall be reinstated. The
17 member is subject to the benefits and duties in effect at the time of the
18 member's most recent reemployment except as provided in section 38-711,
19 paragraph 5, subdivision (a). If a member redeposits less than the amount
20 required under this subsection, ASRS shall proportionately reduce the
21 member's reinstated service credits.

22 C. A member who is receiving benefits pursuant to section 38-797.07
23 and who received a return of contributions on termination of employment and
24 by receipt of those contributions forfeited credited service earned on that
25 employment, as provided in section 38-740, subsection A OR B, may redeposit
26 the amount of the contributions the member received at the time of the
27 member's previous separation from service, with interest on that amount to
28 the date of redeposit at the interest rate assumption approved by the board
29 for actuarial equivalency. On redeposit of the contributions and interest,
30 the member's service credits acquired by the previous employment shall be
31 reinstated. The member is subject to the benefits and duties in effect at
32 the time of the member's most recent reemployment except as provided in
33 section 38-711, paragraph 5, subdivision (a). If a member redeposits less
34 than the amount required under this subsection, ASRS shall proportionately
35 reduce the member's reinstated service credits.

36 Sec. 4. Section 38-758, Arizona Revised Statutes, is amended to read:

37 38-758. Early retirement

38 A. A member who has attained age fifty and who has five years of total
39 credited service is eligible to elect, in a form and manner prescribed by the
40 board, to receive a reduced retirement income.

41 B. FOR A MEMBER WHOSE MEMBERSHIP IN ASRS COMMENCED BEFORE JULY 1,
42 2011, the benefit payable to a member electing early retirement shall be
43 determined by reducing the normal retirement benefit computed in accordance
44 with section 38-757 either:

1 1. At the rate of three per cent per year from age sixty to age
2 sixty-five and five per cent per year from age fifty to age sixty. The
3 reduction in normal retirement benefits pursuant to this paragraph for an
4 eligible member electing early retirement shall be based on the period from
5 the date of commencement of early retirement benefits to the member's
6 sixtieth birthday if the member has at least twenty years of total credited
7 service, sixty-second birthday if the member has at least ten but less than
8 twenty years of total credited service or sixty-fifth birthday if the member
9 has at least five but less than ten years of total credited service.

10 2. If the sum of a member's age and years of total credited service
11 equals seventy-seven or more, but is less than eighty, at the rate of three
12 per cent for each unit of one or fraction of one by which the sum is less
13 than eighty.

14 C. FOR A MEMBER WHOSE MEMBERSHIP IN ASRS COMMENCED ON OR AFTER JULY 1,
15 2011, THE BENEFIT PAYABLE TO A MEMBER ELECTING EARLY RETIREMENT SHALL BE
16 DETERMINED BY REDUCING THE NORMAL RETIREMENT BENEFIT COMPUTED IN ACCORDANCE
17 WITH SECTION 38-757 BY THE LESSER OF EITHER:

18 1. AT THE RATE OF THREE PER CENT PER YEAR FROM AGE SIXTY TO AGE
19 SIXTY-FIVE AND FIVE PER CENT PER YEAR FROM AGE FIFTY TO AGE SIXTY. THE
20 REDUCTION IN NORMAL RETIREMENT BENEFITS PURSUANT TO THIS PARAGRAPH FOR AN
21 ELIGIBLE MEMBER ELECTING EARLY RETIREMENT SHALL BE BASED ON THE PERIOD FROM
22 THE DATE OF COMMENCEMENT OF EARLY RETIREMENT BENEFITS TO THE MEMBER'S
23 SIXTY-SECOND BIRTHDAY IF THE MEMBER HAS AT LEAST TEN YEARS OF TOTAL CREDITED
24 SERVICE OR SIXTY-FIFTH BIRTHDAY IF THE MEMBER HAS AT LEAST FIVE BUT LESS THAN
25 TEN YEARS OF TOTAL CREDITED SERVICE.

26 2. IF THE SUM OF A MEMBER'S AGE AND YEARS OF TOTAL CREDITED SERVICE
27 EQUALS EIGHTY-TWO OR MORE, BUT IS LESS THAN EIGHTY-FIVE, AT THE RATE OF THREE
28 PER CENT FOR EACH UNIT OF ONE OR FRACTION OF ONE BY WHICH THE SUM IS LESS
29 THAN EIGHTY-FIVE.

30 Sec. 5. Section 38-769, Arizona Revised Statutes, is amended to read:

31 38-769. Maximum retirement benefits; termination; definitions

32 A. Notwithstanding any other provision of this article, except as
33 provided in subsection C of this section, the employer provided portion of a
34 member's annual benefit payable in the form of a straight life annuity, at
35 any time within a limitation year, shall not exceed one hundred sixty
36 thousand dollars or a larger amount that is effective as of January 1 of each
37 calendar year, is prescribed by the board and is due to any cost of living
38 adjustment announced by the United States secretary of the treasury pursuant
39 to section 415(d) of the internal revenue code. The board shall increase the
40 amount pursuant to this subsection as of the effective date of the increase
41 as prescribed by the United States secretary of the treasury. Benefit
42 increases provided in this section resulting from the increase in the
43 limitations of section 415(b) of the internal revenue code as amended by the
44 economic growth and tax relief reconciliation act of 2001 shall be provided
45 to all current and former members who have benefits that are limited by

1 section 415(b) of the internal revenue code and who have an accrued benefit
2 under ASRS immediately before July 1, 2001, other than an accrued benefit
3 resulting from a benefit increase solely as a result of the increases
4 provided by this section resulting from the increase in the limitations of
5 section 415(b) of the internal revenue code as amended by the economic growth
6 and tax relief reconciliation act of 2001.

7 B. Notwithstanding the limitations of subsection A of this section,
8 the benefits payable to a member are deemed not to exceed the limitations
9 determined under subsection A of this section if the retirement benefits
10 payable to the member under this article do not exceed ten thousand dollars
11 for the limitation year and if an employer has not at any time maintained a
12 defined contribution plan in which the member has participated.

13 C. The limitations determined under subsection A of this section are
14 subject to the following adjustments:

15 1. If a member has less than ten years of membership in ASRS, the
16 maximum dollar limitation determined under subsection A of this section shall
17 be multiplied by a fraction, the numerator of which is the number of years,
18 or partial years, of membership in ASRS and the denominator of which is ten.
19 The reduction provided in this paragraph also applies to the ten thousand
20 dollar floor limitation provided in subsection B of this section, except that
21 the reduction applies to years of service with an employer rather than to
22 years of membership in ASRS. The reduction in this paragraph does not reduce
23 the limitations determined under subsection A of this section to an amount
24 less than one-tenth of the limitations as determined without regard to this
25 paragraph.

26 2. If a member's annual benefit commences before the member attains
27 sixty-two years of age, the defined benefit dollar limitation applicable to
28 the member at the earlier age is an annual benefit payable in the form of a
29 straight life annuity beginning at the earlier age that is the actuarial
30 equivalent of the defined benefit dollar limitation applicable to the member
31 at age sixty-two and that is adjusted under paragraph 1 of this subsection,
32 if required. The defined benefit dollar limitation applicable at an age
33 before age sixty-two is determined as the lesser of:

34 (a) The actuarial equivalent at that age of the defined benefit dollar
35 limitation computed using the interest rate specified by the board in section
36 38-711, paragraph 2 and the mortality table or other tabular factors
37 prescribed in paragraph 5 of this subsection.

38 (b) The actuarial equivalent at that age of the defined benefit dollar
39 limitation computed using a five per cent interest rate and the applicable
40 mortality table prescribed in paragraph 5 of this subsection. Any decrease
41 in the defined benefit dollar limitation determined in accordance with this
42 paragraph shall not reflect a mortality decrement if benefits are not
43 forfeited on the death of the member. If any benefits are forfeited on
44 death, the full mortality decrement is taken into account.

1 3. If a member's annual benefit commences after sixty-five years of
2 age, the limitation determined under subsection A of this section applicable
3 to the member at the later age is the annual benefit payable in the form of a
4 straight life annuity beginning at the later age that is actuarially
5 equivalent to the defined benefit dollar limitation applicable to the
6 participant at age sixty-five and that is adjusted under paragraph 1 of this
7 subsection, if required. The actuarial equivalent of the defined benefit
8 dollar limitation applicable at an age after age sixty-five is determined as
9 the lesser of:

10 (a) The actuarial equivalent at that age of the defined benefit dollar
11 limitation computed using the interest rate specified by the board as
12 provided in section 38-711, paragraph 2 and the mortality table or other
13 tabular factors prescribed in paragraph 5 of this subsection.

14 (b) The actuarial equivalent at that age of the defined benefit dollar
15 limitation computed using a five per cent interest rate assumption and the
16 applicable mortality table prescribed in paragraph 5 of this subsection. For
17 the purposes of this subdivision, mortality between age sixty-five and the
18 age at which benefits commence shall be ignored.

19 4. If the member's benefit is paid in a form other than a straight
20 life annuity, the benefit paid may not exceed the actuarial equivalent of the
21 maximum annual benefit payable as a straight life annuity disregarding the
22 portion of any joint and survivor annuity that constitutes a qualified joint
23 and survivor annuity as defined in section 417 of the internal revenue code.
24 Effective for plan years beginning from and after June 30, 2004, actuarial
25 equivalency under this paragraph shall be determined by the use of an
26 interest rate assumption equal to one of the following rates:

27 (a) For benefits paid under ASRS in a form to which section 417(e)(3)
28 of the internal revenue code would apply if that section of the internal
29 revenue code were applicable to ASRS, the greater of:

30 (i) Five and one-half per cent a year.

31 (ii) The rate that provides a benefit of not more than one hundred
32 five per cent of the benefit that would be provided if the applicable
33 interest rate, as defined in section 417(e)(3) of the internal revenue code,
34 were the interest rate assumption.

35 (iii) The rate specified by the board as provided in section 38-711,
36 paragraph 2.

37 (b) For benefits paid under ASRS in a form to which section 417(e)(3)
38 of the internal revenue code does not apply if that section of the internal
39 revenue code were applicable to ASRS, five per cent per year.

40 In the case of any member or beneficiary receiving a distribution from and
41 after December 31, 2003 but before January 1, 2005, the amount payable under
42 any form of benefit subject to adjustment under this paragraph shall not,
43 solely by reason of the interest rate assumptions contained in this
44 paragraph, be less than the amount that would have been payable had the

1 amount payable been determined using the applicable interest rate in effect
2 as of the last day of the plan year beginning July 1, 2003.

3 5. For the purposes of adjusting any benefit or limitation under
4 paragraph 2, 3 or 4 of this subsection, the board shall use the mortality
5 table prescribed by the United States secretary of the treasury as required
6 by section 415(b)(2)(E)(v) of the internal revenue code, which, effective for
7 distributions with annuity starting dates from and after December 30, 2002,
8 shall be the mortality table published by the internal revenue service in
9 revenue ruling 2001-62, as modified by the internal revenue service in
10 revenue ruling 2007-67, until later changed or modified by the internal
11 revenue service.

12 D. Subsection C, paragraphs 1 and 2 of this section do not apply to
13 income received from ASRS as a pension, annuity or similar allowance as a
14 result of the recipient becoming disabled by personal injury or sickness or
15 to amounts received from ASRS by beneficiaries, survivors or the estate of a
16 member as a result of the death of the member.

17 E. Notwithstanding any other provision of this section, the annual
18 benefit payable under this article may be reduced to the extent necessary, as
19 determined by the board, to prevent disqualification of ASRS under section
20 415 of the internal revenue code that imposes additional limitations on the
21 annual benefits payable to members who also may be participating in another
22 tax qualified pension or savings plan of this state. An employer shall not
23 provide employee retirement or deferred benefits if the benefits authorized
24 by this section and as required by federal law result in the failure of ASRS
25 to meet federal qualification standards as applied to public pension plans.
26 The board shall advise affected members of any additional information
27 concerning their annual benefits required by this subsection. ALL BENEFITS
28 PAYABLE PURSUANT TO THIS SUBSECTION SHALL COMPLY WITH THE LIMITATIONS OF
29 BENEFITS CONTAINED IN SECTION 415 OF THE INTERNAL REVENUE CODE AND THE FINAL
30 TREASURY REGULATIONS ISSUED UNDER THAT SECTION. NOTWITHSTANDING ANY
31 PROVISION OF THIS ARTICLE TO THE CONTRARY, IF THE ANNUAL BENEFITS WITHIN THE
32 MEANING OF SECTION 415 OF THE INTERNAL REVENUE CODE ARE EXCEEDED FOR ANY
33 MEMBER, ASRS MAY ONLY CORRECT THE EXCESS PURSUANT TO THE EMPLOYEE PLANS
34 COMPLIANCE RESOLUTION SYSTEM PRESCRIBED IN INTERNAL REVENUE SERVICE REVENUE
35 PROCEDURE 2008-50 OR ANY FUTURE GUIDANCE BY THE INTERNAL REVENUE SERVICE,
36 INCLUDING THE PREAMBLE OF THE FINAL TREASURY REGULATIONS ISSUED UNDER SECTION
37 415 OF THE INTERNAL REVENUE CODE.

38 F. If the maximum amount of benefit allowed under section 415 of the
39 internal revenue code is increased after the commencement date of a member's
40 benefit due to any cost of living adjustment announced by the United States
41 secretary of the treasury pursuant to the provisions of section 415(d) of the
42 internal revenue code, the amount of the monthly benefit payable under ASRS
43 to a member whose benefit is restricted due to the provisions of section
44 415(d) of the internal revenue code shall be increased by the board as of the
45 date prescribed by the United States secretary of the treasury on which the

1 increase shall become effective. The increase shall reflect the increase in
2 the amount of retirement income that may be payable under this article as a
3 result of the cost of living adjustment.

4 G. In determining the adjustments to the defined benefit dollar
5 limitation authorized by subsection A of this section, the board shall
6 prescribe a larger defined benefit dollar limitation if prescribed by the
7 United States secretary of the treasury pursuant to section 415(d) of the
8 internal revenue code. An adjustment to the defined benefit dollar
9 limitation prescribed in subsection A of this section is not effective before
10 the first calendar year for which the United States secretary of the treasury
11 publishes the adjustment. After it is prescribed by the board, the new
12 defined benefit dollar limitation applies to the limitation year ending with
13 or within the calendar year for which the secretary of the treasury makes the
14 adjustment.

15 H. For the purposes of the limitations prescribed by this section, all
16 member and employer contributions made to ASRS to provide a member benefits
17 pursuant to section 38-771 or 38-771.01 and all member contributions that are
18 not treated as picked up by the employer under section 414(h)(2) of the
19 internal revenue code shall be treated as made to a separate defined
20 contribution plan.

21 I. On termination of ASRS the accrued benefit of each member is, as of
22 the date of termination, fully vested and nonforfeitable.

23 J. If ASRS terminates, the benefit of any highly compensated employee
24 as defined in section 414(q) of the internal revenue code and any highly
25 compensated former employee is limited to a benefit that is nondiscriminatory
26 under section 401(a)(4) of the internal revenue code and as follows:

27 1. Benefits distributed to any of the twenty-five active and former
28 highly compensated employees with the greatest compensation in the current or
29 any prior fiscal year are restricted so that the annual payments are no
30 greater than an amount equal to the payment that would be made on behalf of
31 the member under a straight life annuity that is the actuarial equivalent of
32 the sum of the member's accrued benefit, the member's other benefits under
33 ASRS, excluding a social security supplement as defined in 26 Code of Federal
34 Regulations section 1.411(a)-7(C)(4)(ii), and the amount the member is
35 entitled to receive under a social security supplement.

36 2. Paragraph 1 of this subsection does not apply if either:

37 (a) After payment of the benefit to a member described in paragraph 1
38 of this subsection, the value of ASRS assets equals or exceeds one hundred
39 ten per cent of the value of the current liabilities, as defined in section
40 412(l)(7) of the internal revenue code, of ASRS.

41 (b) The value of the benefits for a member described in paragraph 1 of
42 this subsection is less than one per cent of the value of the current
43 liabilities, as defined in section 412(l)(7) of the internal revenue code, of
44 ASRS before distribution.

1 (c) The value of the benefits payable by ASRS to a member described in
2 paragraph 1 of this subsection does not exceed three thousand five hundred
3 dollars.

4 K. For the purposes of subsection J of this section, "benefit"
5 includes loans in excess of the amount prescribed in section 72(p)(2)(A) of
6 the internal revenue code, any periodic income, any withdrawal values payable
7 to a living member and any death benefits not provided for by insurance on
8 the member's life.

9 L. On retirement of a member who was a retired member, who resumed
10 active membership and who subsequently retires, the limitations of this
11 section in effect on the member's subsequent retirement apply to the member's
12 retirement benefit payable as recomputed pursuant to section 38-766. In
13 addition, the sum of the present value of the member's recomputed retirement
14 benefits plus the present value of the benefits the member received during
15 the member's prior retirement shall not exceed the present value of the
16 limitations in effect on the member's subsequent retirement. The limitations
17 prescribed in this subsection shall not reduce a member's retirement benefit
18 below the retirement benefit the member was receiving before the member
19 resumed active membership. For the purposes of determining present value
20 under this subsection, the board shall use the actuarial equivalent
21 assumptions provided in section 38-711, paragraph 2.

22 M. FOR THE PURPOSES OF THIS SECTION:

23 1. THE FOLLOWING ADJUSTMENTS SHALL BE MADE TO THE DEFINITION OF
24 COMPENSATION PRESCRIBED IN SUBSECTION O OF THIS SECTION:

25 (a) COMPENSATION SHALL BE ADJUSTED FOR THE TYPES OF COMPENSATION THAT
26 ARE PRESCRIBED IN THIS PARAGRAPH AND THAT ARE PAID AFTER A MEMBER'S SEVERANCE
27 FROM EMPLOYMENT WITH AN EMPLOYER. AMOUNTS DESCRIBED IN SUBDIVISIONS (b), (c)
28 AND (d) MAY BE INCLUDED ONLY AS COMPENSATION TO THE EXTENT THE AMOUNTS ARE
29 PAID BY THE LATER OF TWO AND ONE-HALF MONTHS AFTER SEVERANCE FROM EMPLOYMENT
30 OR BY THE END OF THE LIMITATION YEAR THAT INCLUDES THE DATE OF THE SEVERANCE
31 FROM EMPLOYMENT. ANY OTHER PAYMENT OF COMPENSATION PAID AFTER SEVERANCE OF
32 EMPLOYMENT THAT IS NOT DESCRIBED IN THE TYPES OF COMPENSATION PRESCRIBED IN
33 THIS PARAGRAPH IS NOT CONSIDERED COMPENSATION FOR PURPOSES OF THIS SECTION,
34 EVEN IF PAYMENT IS MADE WITHIN THE TIME PERIOD PRESCRIBED IN THIS
35 SUBDIVISION.

36 (b) COMPENSATION SHALL INCLUDE REGULAR PAY AFTER SEVERANCE OF
37 EMPLOYMENT IF THE PAYMENT IS REGULAR COMPENSATION FOR SERVICES PERFORMED
38 DURING THE MEMBER'S REGULAR WORKING HOURS OR COMPENSATION FOR SERVICES
39 PERFORMED OUTSIDE THE MEMBER'S REGULAR WORKING HOURS, SUCH AS OVERTIME OR
40 SHIFT DIFFERENTIAL, COMMISSION, BONUS OR OTHER SIMILAR PAYMENTS, AND THE
41 PAYMENT WOULD HAVE BEEN PAID TO THE MEMBER BEFORE A SEVERANCE FROM EMPLOYMENT
42 IF THE MEMBER HAD CONTINUED IN EMPLOYMENT WITH THE EMPLOYER.

43 (c) LEAVE CASH OUTS SHALL BE INCLUDED IN COMPENSATION IF THOSE AMOUNTS
44 WOULD HAVE BEEN INCLUDED IN COMPENSATION IF THEY WERE PAID BEFORE THE
45 MEMBER'S SEVERANCE FROM EMPLOYMENT AND THE AMOUNTS ARE PAYMENT FOR UNUSED

1 ACCRUED BONA FIDE SICK, VACATION OR OTHER LEAVE, BUT ONLY IF THE MEMBER WOULD
2 HAVE BEEN ABLE TO USE THE LEAVE IF EMPLOYMENT HAD CONTINUED.

3 (d) DEFERRED COMPENSATION SHALL BE INCLUDED IN COMPENSATION IF THE
4 COMPENSATION WOULD HAVE BEEN INCLUDED IN COMPENSATION IF IT HAD BEEN PAID
5 BEFORE THE MEMBER'S SEVERANCE FROM EMPLOYMENT AND THE COMPENSATION IS
6 RECEIVED PURSUANT TO A NONQUALIFIED UNFUNDED DEFERRED COMPENSATION PLAN, BUT
7 ONLY IF THE PAYMENT WOULD HAVE BEEN PAID AT THE SAME TIME IF THE MEMBER HAD
8 CONTINUED IN EMPLOYMENT WITH THE EMPLOYER AND ONLY TO THE EXTENT THAT THE
9 PAYMENT IS INCLUDABLE IN THE MEMBER'S GROSS INCOME.

10 (e) COMPENSATION DOES INCLUDE PAYMENTS TO AN INDIVIDUAL WHO DOES NOT
11 CURRENTLY PERFORM SERVICES FOR AN EMPLOYER BY REASON OF QUALIFIED MILITARY
12 SERVICE AS DEFINED IN SECTION 414(u)(5) OF THE INTERNAL REVENUE CODE TO THE
13 EXTENT THOSE PAYMENTS DO NOT EXCEED THE AMOUNTS THE INDIVIDUAL WOULD HAVE
14 RECEIVED IF THE INDIVIDUAL HAD CONTINUED TO PERFORM SERVICES FOR THE EMPLOYER
15 RATHER THAN ENTERING QUALIFIED MILITARY SERVICE.

16 (f) COMPENSATION DOES NOT INCLUDE COMPENSATION PAID TO A MEMBER WHO IS
17 PERMANENTLY AND TOTALLY DISABLED AS DEFINED IN SECTION 22(e)(3) OF THE
18 INTERNAL REVENUE CODE.

19 (g) COMPENSATION SHALL INCLUDE AMOUNTS THAT ARE INCLUDABLE IN THE
20 GROSS INCOME OF A MEMBER AS REQUIRED BY SECTION 409A OR SECTION 457(f)(1)(A)
21 OF THE INTERNAL REVENUE CODE OR BECAUSE THE AMOUNTS ARE CONSTRUCTIVELY
22 RECEIVED BY THE MEMBER.

23 2. COMPENSATION FOR A LIMITATION YEAR SHALL NOT INCLUDE AMOUNTS EARNED
24 BUT NOT PAID DURING THE LIMITATION YEAR SOLELY BECAUSE OF THE TIMING OF PAY
25 PERIODS AND PAY DATES.

26 3. PAYMENTS AWARDED BY AN ADMINISTRATIVE AGENCY OR COURT OR PURSUANT
27 TO A BONA FIDE AGREEMENT BY AN EMPLOYER TO COMPENSATE A MEMBER FOR LOST WAGES
28 ARE COMPENSATION FOR THE LIMITATION YEAR TO WHICH THE BACK PAY RELATES, BUT
29 ONLY TO THE EXTENT THE PAYMENTS REPRESENT WAGES AND COMPENSATION THAT WOULD
30 OTHERWISE BE INCLUDED IN COMPENSATION UNDER THIS SECTION.

31 N. THE DEFINITION OF LIMITATION YEAR PRESCRIBED IN SUBSECTION O OF
32 THIS SECTION MAY ONLY BE CHANGED BY AN AMENDMENT TO SUBSECTION O, EXCEPT THAT
33 IF ASRS IS TERMINATED EFFECTIVE AS OF A DATE OTHER THAN THE LAST DAY OF THE
34 LIMITATION YEAR, THE TERMINATION SHALL BE TREATED AS IF THIS SECTION HAS BEEN
35 AMENDED TO CHANGE THE DEFINITION OF LIMITATION YEAR.

36 ~~M.~~ O. For the purposes of this section:

37 1. Annual additions shall be determined as provided in section 38-747,
38 subsection O.

39 2. "Annual benefit" means a benefit, including any portion of a
40 member's retirement benefit payable to an alternate payee under a qualified
41 domestic relations order that satisfies the requirements prescribed in
42 section 414(p)(1)(A)(i) of the internal revenue code and section 38-773,
43 payable annually in the form of a straight life annuity, disregarding the
44 portion of a joint and survivor annuity that constitutes a qualified joint
45 and survivor annuity as defined in section 417 of the internal revenue code,

1 with no ancillary or incidental benefits or rollover contributions and
2 excluding any portion of the benefit derived from member contributions or
3 other contributions that are treated as a separate defined contribution plan
4 under section 415 of the internal revenue code but including any of those
5 contributions that are picked up by the employer under section 414(h) of the
6 internal revenue code, or that otherwise are not treated as a separate
7 defined contribution plan. If the benefit is payable in another form, the
8 determination as to whether the limitation described in subsection A of this
9 section has been satisfied shall be made by the board by adjusting the
10 benefit so that it is actuarially equivalent to the annual benefit described
11 in this paragraph in accordance with the regulations promulgated by the
12 United States secretary of the treasury. In addition, for determining the
13 annual benefit attributable to member contributions, the factors described in
14 section 411(c)(2)(B) of the internal revenue code and the regulations
15 promulgated under the internal revenue code shall be used by the board
16 regardless of whether section 411 of the internal revenue code applies to
17 ASRS. The factors described in section 411(c)(2)(B) of the internal revenue
18 code shall be those factors described under section 417(e)(3) of the internal
19 revenue code and determined on the basis of the 417(e) mortality table and an
20 interest rate as prescribed in subsection C, paragraphs 4 and 5 of this
21 section.

22 3. "Compensation" means the member's earned income, wages, salaries,
23 fees for professional service and other amounts received for personal
24 services actually rendered in the course of employment with the employer and
25 includes amounts described in sections 104(a)(3) and 105(a) of the internal
26 revenue code, but only to the extent that these amounts are includable in the
27 gross income of the member. Compensation also includes any elective deferral
28 as defined in section 402(g)(3) of the internal revenue code and any amount
29 that is contributed or deferred by an employer at the election of a member
30 and that is not includable in the gross income of the member by reason of
31 section 125, 132(f)(4) or 457 of the internal revenue code. Compensation
32 does not mean:

33 (a) Employer contributions to a plan of deferred compensation to the
34 extent the contributions are not included in the gross income of the employee
35 for the taxable year in which contributed and any distributions from a plan
36 of deferred compensation, regardless of whether the amounts are includable in
37 gross income of the employee when distributed, except that any amount
38 received by a member pursuant to an unfunded nonqualified plan may be
39 considered as compensation for the purposes of this section in the year the
40 amounts are includable in the gross income of the member under the internal
41 revenue code.

42 (b) Other amounts that receive special tax benefits, such as premiums
43 for group term life insurance, but only to the extent that the premiums are
44 not includable in the gross income of the employee, qualified transportation
45 fringe benefits as defined in section ~~132(a)(5)~~ 132 of the internal revenue

1 code and, effective for plan years beginning from and after December 31,
2 1987, any amounts under section 125 of the internal revenue code that are not
3 available to a participant in cash in lieu of group health coverage because
4 the member is unable to certify that the member has other health coverage.

5 4. "Defined benefit dollar limitation" means the dollar limitation
6 determined under subsection A of this section.

7 5. "Defined benefit plan" has the same meaning prescribed in section
8 414(j) of the internal revenue code.

9 6. "Defined contribution plan" has the same meaning prescribed in
10 section 414(i) of the internal revenue code.

11 7. "Limitation year" and "years of service" means the fiscal year.

12 Sec. 6. Section 38-783, Arizona Revised Statutes, is amended to read:
13 38-783. Retired members; dependents; health insurance; premium

14 payment; separate account; definitions

15 A. Subject to subsections ~~G, H and I~~ F, G AND H of this section, the
16 board shall pay from ASRS assets part of the single coverage premium of any
17 health and accident insurance for each retired, contingent annuitant or
18 disabled member of ASRS if the member elects to participate in the coverage
19 provided by ASRS or section 38-651.01 or elects to participate in a health
20 and accident insurance program provided or administered by an employer or
21 paid for, in whole or in part, by an employer to an insurer. A contingent
22 annuitant must be receiving a monthly retirement benefit from ASRS in order
23 to obtain any premium payment provided by this section. The board shall pay:

24 1. Up to one hundred fifty dollars per month for a member of ASRS who
25 is not eligible for medicare if the retired or disabled member has ten or
26 more years of credited service.

27 2. Up to one hundred dollars per month for each member of ASRS who is
28 eligible for medicare if the retired or disabled member has ten or more years
29 of credited service.

30 B. Subject to subsections ~~G, H and I~~ F, G AND H of this section, the
31 board shall pay from ASRS assets part of the family coverage premium of any
32 health and accident insurance for a retired, contingent annuitant or disabled
33 member of ASRS who elects family coverage and who otherwise qualifies for
34 payment pursuant to subsection A of this section. If a member of ASRS and
35 the member's spouse are both either retired or disabled under ASRS and apply
36 for family coverage, the member who elects family coverage is entitled to
37 receive the payments under this section as if they were both applying under a
38 single coverage premium unless the payment under this section for family
39 coverage is greater. Payment under this subsection is in the following
40 amounts:

41 1. Up to two hundred sixty dollars per month if the member of ASRS and
42 one or more dependents are not eligible for medicare.

43 2. Up to one hundred seventy dollars per month if the member of ASRS
44 and one or more dependents are eligible for medicare.

45 3. Up to two hundred fifteen dollars per month if either:

1 (a) The member of ASRS is not eligible for medicare and one or more
2 dependents are eligible for medicare.

3 (b) The member of ASRS is eligible for medicare and one or more
4 dependents are not eligible for medicare.

5 C. In addition each retired, contingent annuitant or disabled member
6 of ASRS with less than ten years of credited service and a dependent of such
7 a retired, contingent annuitant or disabled member who elects to participate
8 in the coverage provided by ASRS or section 38-651.01 or who elects to
9 participate in a health and accident insurance program provided or
10 administered by an employer or paid for, in whole or in part, by an employer
11 to an insurer is entitled to receive a proportion of the full benefit
12 prescribed by subsection A or B of this section according to the following
13 schedule:

- 14 1. 9.0 to 9.9 years of credited service, ninety per cent.
- 15 2. 8.0 to 8.9 years of credited service, eighty per cent.
- 16 3. 7.0 to 7.9 years of credited service, seventy per cent.
- 17 4. 6.0 to 6.9 years of credited service, sixty per cent.
- 18 5. 5.0 to 5.9 years of credited service, fifty per cent.
- 19 6. Those with less than five years of credited service do not qualify
20 for the benefit.

21 D. The board shall not pay more than the amount prescribed in this
22 section for a member of ASRS.

23 ~~E. A retired, contingent annuitant or disabled member of ASRS may~~
24 ~~elect to purchase individual health care coverage and receive a payment~~
25 ~~pursuant to this section through the retired or disabled member's employer if~~
26 ~~that employer assumes the administrative functions associated with the~~
27 ~~payment, including verification that the payment is used to pay for health~~
28 ~~insurance coverage if the payment is made to the retired or disabled member.~~

29 F. E. The board shall establish a separate account that consists of
30 the benefits provided by this section. The board shall not use or divert any
31 part of the corpus or income of the account for any purpose other than the
32 provision of benefits under this section unless the liabilities of ASRS to
33 provide the benefits are satisfied. If the liabilities of ASRS to provide
34 the benefits described in this section are satisfied, the board shall return
35 any amount remaining in the account to the employer.

36 ~~G.~~ F. Payment of the benefits provided by this section is subject to
37 the following conditions:

38 1. The payment of the benefits is subordinate to the payment of
39 retirement benefits payable by ASRS.

40 2. The total of contributions for the benefits and actual
41 contributions for life insurance protection, if any, shall not exceed
42 twenty-five per cent of the total actual employer and employee contributions
43 to ASRS, less contributions to fund past service credits, after the day the
44 account is established.

1 3. The board shall deposit the benefits provided by this section in
2 the account.

3 4. The contributions by the employer to the account shall be
4 reasonable and ascertainable.

5 H. G. A member who elects to receive a retirement benefit pursuant to
6 section 38-760, subsection B, paragraph 1 may elect at the time of retirement
7 an optional form of health and accident insurance premium benefit payment
8 pursuant to this subsection as follows:

9 1. The optional premium benefit payment shall be an amount prescribed
10 by subsection A, B or C of this section that is actuarially reduced to the
11 retiring member for life. The amount of the optional premium benefit payment
12 shall be the actuarial equivalent of the premium benefit payment to which the
13 retired member would otherwise be entitled. The election in a manner
14 prescribed by the board shall name the contingent annuitant and may be
15 revoked at any time before the retiring member's effective date of
16 retirement. At any time after benefits have commenced, the member may name a
17 different contingent annuitant or rescind the election by written notice to
18 the board as follows:

19 (a) If the retired member names a different contingent annuitant, the
20 optional premium benefit payment shall be adjusted to the actuarial
21 equivalent of the original premium benefit payment based on the age of the
22 new contingent annuitant. The adjustment shall include all postretirement
23 increases or decreases in amounts prescribed by subsection A, B or C of this
24 section that are authorized by law after the retired member's date of
25 retirement. Payment of this adjusted premium benefit payment shall continue
26 under the provisions of the optional premium benefit payment previously
27 elected by the retired member. A retired member cannot name a different
28 contingent annuitant if the retired member has at any time rescinded the
29 optional form of health and accident insurance premium benefit payment.

30 (b) If the retired member rescinds the election, the retired member
31 shall thereafter receive the premium benefit payment that the retired member
32 would otherwise be entitled to receive if the retired member had not elected
33 the optional premium benefit payment, including all postretirement increases
34 or decreases in amounts prescribed by subsection A, B or C of this section
35 that are authorized by law after the member's date of retirement. The
36 increased benefit payment shall continue during the remainder of the retired
37 member's lifetime. The decision to rescind shall be irrevocable.

38 2. If, at the time of the retired member's death:

39 (a) The retired member was receiving a reduced premium benefit payment
40 based on an amount prescribed in subsection B or C of this section and the
41 contingent annuitant is eligible for family health and accident insurance
42 coverage, the contingent annuitant is entitled to receive a premium benefit
43 payment based on an amount prescribed in subsection B or C of this section
44 times the reduction factor applied to the retired member's premium benefit
45 payment times the joint and survivor option reduction factor elected by the

1 retired member at the time of retirement pursuant to section 38-760,
2 subsection B, paragraph 1.

3 (b) The retired member was receiving a reduced premium benefit payment
4 based on an amount prescribed in subsection A or C of this section and the
5 contingent annuitant is eligible for single health and accident insurance
6 coverage, the contingent annuitant is entitled to receive a premium benefit
7 payment based on an amount prescribed in subsection A or C of this section
8 times the reduction factor applied to the retired member's premium benefit
9 payment times the joint and survivor option reduction factor elected by the
10 retired member at the time of retirement pursuant to section 38-760,
11 subsection B, paragraph 1.

12 (c) The retired member was receiving a reduced premium benefit payment
13 based on an amount prescribed in subsection B or C of this section and the
14 contingent annuitant is not eligible for family health and accident insurance
15 coverage, the contingent annuitant is entitled to receive a premium benefit
16 payment based on an amount prescribed in subsection A or C of this section
17 times the reduction factor applied to the retired member's premium benefit
18 payment times the joint and survivor option reduction factor elected by the
19 retired member at the time of retirement pursuant to section 38-760,
20 subsection B, paragraph 1.

21 ~~I~~ H. A member who elects to receive a retirement benefit pursuant to
22 section 38-760, subsection B, paragraph 2 may elect at the time of retirement
23 an optional form of health and accident insurance premium benefit payment
24 pursuant to this subsection as follows:

25 1. The optional premium benefit payment shall be an amount prescribed
26 by subsection A, B or C of this section that is actuarially reduced with
27 payments for five, ten or fifteen years that are not dependent on the
28 continued lifetime of the retired member but whose payments continue for the
29 retired member's lifetime beyond the five, ten or fifteen year period. The
30 election in a manner prescribed by the board shall name the contingent
31 annuitant and may be revoked at any time before the retiring member's
32 effective date of retirement. At any time after benefits have commenced, the
33 member may name a different contingent annuitant or rescind the election by
34 written notice to the board. If the retired member rescinds the election,
35 the retired member shall thereafter receive the premium benefit payment that
36 the retired member would otherwise be entitled to receive if the retired
37 member had not elected the optional premium benefit payment, including all
38 postretirement increases or decreases in amounts prescribed by subsection A,
39 B or C of this section that are authorized by law after the member's date of
40 retirement. The increased benefit payment shall continue during the
41 remainder of the retired member's lifetime. The decision to rescind shall be
42 irrevocable.

43 2. If, at the time of the retired member's death:

44 (a) The retired member was receiving a reduced premium benefit payment
45 based on an amount prescribed in subsection B or C of this section and the

1 contingent annuitant is eligible for family health and accident insurance
2 coverage, the contingent annuitant is entitled to receive a premium benefit
3 payment based on an amount prescribed in subsection B or C of this section
4 times the period certain and life option reduction factor elected by the
5 retired member at the time of retirement pursuant to section 38-760,
6 subsection B, paragraph 2.

7 (b) The retired member was receiving a reduced premium benefit payment
8 based on an amount prescribed in subsection A or C of this section and the
9 contingent annuitant is eligible for single health and accident insurance
10 coverage, the contingent annuitant is entitled to receive a premium benefit
11 payment based on an amount prescribed in subsection A or C of this section
12 times the period certain and life option reduction factor elected by the
13 retired member at the time of retirement pursuant to section 38-760,
14 subsection B, paragraph 2.

15 (c) The retired member was receiving a reduced premium benefit payment
16 based on an amount prescribed in subsection B or C of this section and the
17 contingent annuitant is not eligible for family health and accident insurance
18 coverage, the contingent annuitant is entitled to receive a premium benefit
19 payment based on an amount prescribed in subsection A or C of this section
20 times the period certain and life option reduction factor elected by the
21 retired member at the time of retirement pursuant to section 38-760,
22 subsection B, paragraph 2.

23 ~~J.~~ I. If, at the time of retirement, a retiring member does not elect
24 to receive a reduced premium benefit payment pursuant to subsection ~~H~~ G or
25 ~~I~~ H of this section, the retired member's contingent annuitant is not
26 eligible at any time for the optional premium benefit payment.

27 ~~K.~~ J. A contingent annuitant is not eligible for any premium benefit
28 payment if the contingent annuitant was not enrolled in an eligible health
29 and accident insurance plan at the time of the retired member's death or if
30 the contingent annuitant is not the dependent beneficiary or insured
31 surviving dependent as provided in section 38-782.

32 ~~L.~~ K. For the purposes of this section:

33 1. "Account" means the separate account established pursuant to
34 subsection ~~F~~ E of this section.

35 2. "Credited service" includes prior service.

36 3. "Prior service" means service for this state or a political
37 subdivision of this state before membership in the defined contribution
38 program administered by ASRS.

39 Sec. 7. Section 38-797.03, Arizona Revised Statutes, is amended to
40 read:

41 38-797.03. ASRS board; personnel; duties; hearing or review;
42 executive session

43 A. The board shall administer the LTD program. ASRS officers,
44 contractors and personnel shall perform the duties prescribed by this
45 article.

1 B. THE BOARD MAY DETERMINE THE RIGHTS, BENEFITS OR OBLIGATIONS OF ANY
2 PERSON UNDER THIS ARTICLE AND AFFORD ANY PERSON DISSATISFIED WITH A
3 DETERMINATION OF THEIR RIGHTS, BENEFITS OR OBLIGATIONS UNDER THIS ARTICLE
4 WITH A HEARING ON THE DETERMINATION. NOTWITHSTANDING SECTION 38-431.03, THE
5 BOARD SHALL HOLD A HEARING OR REVIEW OF AN ADMINISTRATIVE LAW JUDGE'S WRITTEN
6 DECISION IN AN EXECUTIVE SESSION IF THE AGGRIEVED PERSON MAKES SUCH A
7 REQUEST. IF THE BOARD HOLDS A HEARING OR REVIEW IN EXECUTIVE SESSION
8 PURSUANT TO THIS SUBSECTION, THE BOARD SHALL USE THE PROCEDURES FOR AN
9 EXECUTIVE SESSION AS PROVIDED IN SECTION 38-431.03. MINUTES OF AND
10 DISCUSSIONS HELD AT AN EXECUTIVE SESSION ARE CONFIDENTIAL EXCEPT FROM THE
11 AGGRIEVED PERSON FOR THE PURPOSES OF AN APPEAL OF THE BOARD'S DECISION TO THE
12 SUPERIOR COURT ON THE MATTER THAT IS DETERMINED BY THE BOARD. THE AGGRIEVED
13 PERSON MUST REQUEST AN EXECUTIVE SESSION HEARING AT LEAST FORTY-EIGHT HOURS
14 BEFORE THE HEARING.

15 ~~B.~~ C. The board may enter into a contract with an insurance company
16 or another entity to administer all or part of the LTD program and to
17 determine eligibility for benefits under the LTD program.

18 ~~C.~~ D. The board shall pay from the LTD trust fund the amounts
19 necessary to pay benefits under and costs of administering the LTD program.

20 Sec. 8. Appropriation; Arizona state retirement system;
21 exemption

22 A. The sum of \$1,341,722 is appropriated from the Arizona state
23 retirement system administration account fund in fiscal year 2010-2011 to the
24 Arizona state retirement system for the administrative implementation of this
25 act.

26 B. The appropriation made in subsection A of this section is exempt
27 from the provisions of section 35-190, Arizona Revised Statutes, relating to
28 lapsing of appropriations.

29 Sec. 9. Insurance subsidy payments received through retired
30 employer

31 A retired, contingent annuitant or disabled member of the Arizona state
32 retirement system who is receiving the payments allowed by section 38-783,
33 Arizona Revised Statutes, through the retired or disabled member's employer
34 on the effective date of this act may continue to receive such a payment as
35 long as the retired member's employer assumes the administrative functions
36 associated with the payment.

APPROVED BY THE GOVERNOR APRIL 14, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 14, 2010.